

Assembly Bill No. 2210

CHAPTER 380

An act to add Section 633.8 to the Penal Code, relating to interception of communications.

[Approved by Governor September 25, 2010. Filed with
Secretary of State September 27, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2210, Fuentes. Intercepted communications: hostage taking and barricading.

Existing law prohibits a person from intentionally eavesdropping upon or recording a confidential communication by means of any electronic amplifying device or recording device without the consent of all parties to the communication. Under existing law, specified law enforcement agents may make a written application to a judge to authorize the interception of a wire, electronic pager, or electronic cellular telephone communication. In certain instances the application can be made informally and granted orally if an emergency situation exists, as specified.

This bill would authorize a peace officer who is authorized by a county district attorney or the Attorney General to authorize the use of an electronic amplifying or recording device to eavesdrop on or record, or both, any oral communication in an emergency situation involving a barricade situation or hostage situation, as defined, if the peace officer reasonably determines that an emergency situation exists, that the emergency situation requires that the eavesdropping occur immediately, and that there are grounds upon which an order could be obtained in regard to certain specified offenses. This bill would require a written application to be made seeking to authorize the eavesdropping within 48 hours.

The people of the State of California do enact as follows:

SECTION 1. Section 633.8 is added to the Penal Code, to read:

633.8. (a) It is the intent of the Legislature in enacting this section to provide law enforcement with the ability to use electronic amplifying or recording devices to eavesdrop on and record the otherwise confidential oral communications of individuals within a location when responding to an emergency situation that involves the taking of a hostage or the barricading of a location. It is the intent of the Legislature that eavesdropping on oral communications pursuant to this section comply with paragraph (7) of Section 2518 of Title 18 of the United States Code.

(b) Notwithstanding the provisions of this chapter, and in accordance with federal law, a designated peace officer described in subdivision (c) may use, or authorize the use of, an electronic amplifying or recording device to eavesdrop on or record, or both, any oral communication within a particular location in response to an emergency situation involving the taking of a hostage or hostages or the barricading of a location if all of the following conditions are satisfied:

(1) The officer reasonably determines that an emergency situation exists involving the immediate danger of death or serious physical injury to any person, within the meaning of Section 2518(7)(a)(i) of Title 18 of the United States Code.

(2) The officer reasonably determines that the emergency situation requires that the eavesdropping on oral communication occur immediately.

(3) There are grounds upon which an order could be obtained pursuant to Section 2516(2) of Title 18 of the United States Code in regard to the offenses enumerated therein.

(c) Only a peace officer who has been designated by either a district attorney in the county where the emergency exists, or by the Attorney General to make the necessary determinations pursuant to paragraphs (1), (2), and (3) of subdivision (b) may make those determinations for purposes of this section.

(d) If the determination is made by a designated peace officer described in subdivision (c) that an emergency situation exists, a peace officer shall not be required to knock and announce his or her presence before entering, installing, and using any electronic amplifying or recording devices.

(e) If the determination is made by a designated peace officer described in subdivision (c) that an emergency situation exists and an eavesdropping device has been deployed, an application for an order approving the eavesdropping shall be made within 48 hours of the beginning of the eavesdropping and shall comply with the requirements of Section 629.50. A court may grant an application authorizing the use of electronic amplifying or recording devices to eavesdrop on and record otherwise confidential oral communications in barricade or hostage situations where there is probable cause to believe that an individual is committing, has committed, or is about to commit an offense listed in Section 2516(2) of Title 18 of the United States Code.

(f) The contents of any oral communications overheard pursuant to this section shall be recorded on tape or other comparable device. The recording of the contents shall be done so as to protect the recording from editing or other alterations.

(g) For purposes of this section, a “barricading” occurs when a person refuses to come out from a covered or enclosed position. Barricading also occurs when a person is held against his or her will and the captor has not made a demand.

(h) For purposes of this section, a “hostage situation” occurs when a person is held against his or her will and the captor has made a demand.

(i) A judge shall not grant an application made pursuant to this section in anticipation that an emergency situation will arise. A judge shall grant an application authorizing the use of electronic amplifying or recording devices to eavesdrop on and record otherwise confidential oral communications in barricade or hostage situations where there is probable cause to believe that an individual is committing, has committed, or is about to commit an offense listed in Section 2516(2) of Title 18 of the United States Code, and only if the peace officer has fully complied with the requirements of this section. If an application is granted pursuant to this section, an inventory shall be served pursuant to Section 629.68.

(j) This section does not require that a peace officer designated pursuant to subdivision (c) undergo training pursuant to Section 629.94.

(k) A peace officer who has been designated pursuant to subdivision (c) to use an eavesdropping device shall cease use of the device upon the termination of the barricade or hostage situation, or upon the denial by a judge of an application for an order to approve the eavesdropping, whichever is earlier.

(l) Nothing in this section shall be deemed to affect the admissibility or inadmissibility of evidence.